

ROBERT T. JARVIS
County Attorney of Grayson County

March 7, 1991

Ms. Susan Garrison
Attorney General Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

1D#11874
RD-42 SG

Assistants
David N. Cole
H. Todd McCray
W.A. "Tony" Vitz
Tom Fowler
Laura Kemp
Merry Worley
Investigator
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Opinion Committee

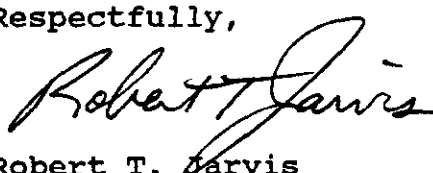
Dear Ms. Garrison:

I am writing to request an Attorney General's opinion concerning the collection of fees under Texas Code of Criminal Procedure, Article 102.011, by police; more specifically, whether a municipal police department can collect a fee for service of process on behalf of the county attorney.

Enclosed please find a short brief that explains the question in more detail. Thank your for your attention to this matter.

When an opinion number has been assigned to this case, please refer it to our office.

Respectfully,


Robert T. Jarvis
County Attorney
Grayson County, Texas

RTJ/md
Enclosure

BRIEF TO ACCOMPANY REQUEST FOR
ATTORNEY GENERAL'S OPINION

ISSUE

Whether a municipal police department can collect a fee for service of process as prescribed by the Texas Code of Criminal Procedure Art. 102.011, when that service is on behalf of the county attorney.

DISCUSSION

The Grayson County Attorney is responsible for the collection and prosecution of violations of Penal Code sec. 31.06, for theft by check. Service of warrants for the arrest of offenders is ordinarily performed by the sheriff. The question has arisen as to the application of C.Cr.P. art 102.011 to the same service by municipal police. The language of C.Cr.P. art. 102.011 does not prescribe a fee specifically for services performed by police.

Art. 102.001 is a recodification of Art. 53.01 with no substantive change intended as indicated by the legislative intent. Therefore the construction and interpretation of Art. 53.01 continues to be valid. Art. 53.01 provides fees for the sheriff or other peace officer performing the same services in misdemeanor cases to be taxed against the defendant. C.Cr.P. art. 53.01 (repealed). Following this interpretation, it would seem clear that the law intends the prescribed fee to go to the officer who serves the warrant. Further, art. 102.011 (f) provides for the custodian of either a municipal or county treasury to receive fees for services performed by peace officers and remit a portion of them to the comptroller of public accounts.

A further interpretation of Art. 53.01 by the Attorney General allocates

the fee prescribed to the arresting officer. Op.Atty.Gen. 1982 MW-561. That opinion states that the sherrif is not entitled to the arrest fee, when the arrest was affected by another peace officer, in this case, a DPS officer. The opinion further provides for the forwarding of the fee to the arresting officer for appropriate disposition. Id.

An earlier Opinion provides a "city marshal of an incorporated city" with the power to arrest in the entire county, and allows him the same fees for services actually performed as are allowed a sheriff. Op.Atty.Gen. 1943 No. 5345.

Considering the above, Art. 102.011 provides fees for the service of a "peace officer" who executes a warrant, and further provides for the fees to be deposited into a municipal treasury, as well as a county treasury. (emphasis added). This interpretation of the article allows the collection of the fees by the officer who performs the services provided in the article.

CONCLUSION

It seems clear that the intent of the article is to provide fees for the actual officer who serves the warrant. By providing for disposition of fees in alternative treasuries, the article sets forth to insure that the fees go to the acting officer. The fees set forth in Art 53.01 are allowed for the sheriff, or other peace officer performing the same service. Thus, by interpreting art. 102.011 vis. art 53.01, the vagueness of 102.011 seems to be alleviated.



ID# 11915
SG

Michael J. Guarino

CRIMINAL DISTRICT ATTORNEY
GALVESTON COUNTY

SUSAN W. BURRIS
FIRST ASSISTANT
GEORGE H. COOLEY
GRAND JURY CHIEF
FELIX M. MARES
CHIEF INVESTIGATOR

405 COUNTY COURTHOUSE
GALVESTON, TEXAS 77550
FAX (409) 766-2290

March 12, 1991

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Opinion Committee

Mr. Rick Gilpin, Chairman
Opinion Committee
Office of the Attorney General of Texas
P. O. Box 12548, Capitol Station
Austin, TX 78711

Re: Art. 102.011, Fees for Services of Peace Officers
Code of Criminal Procedure

Dear Mr. Gilpin:

Pursuant to Section 402.043 of the Texas Government Code, I respectfully request your opinion on questions involving arrest and warrant fees collected in accordance with Art. 102.011(a) and (2), Code of Criminal Procedure. The issue concerns whether municipalities, as well as state and county agencies, are entitled to receive fees for services performed as enumerated in this Article.

The question was raised by the City of Hitchcock, a municipality in Galveston County. The City of Hitchcock has requested payment from the Galveston County Sheriff's Department for services Hitchcock Police Officers have performed under Sections (a) and (2) of Art. 102.011.

Hitchcock's claim to fees collected by the Galveston County Sheriff's Department arise out of the following set of facts:

1. Where a Hitchcock officer arrests a suspect without a warrant and the complaint is not filed in Hitchcock Municipal Court, but in a county court at law. When the defendant is ultimately convicted, he pays his court costs, which include the fee in question, to Galveston County, care of the Galveston County Sheriff's Department.

2. Where a Hitchcock officer executes an arrest warrant which was originally filed and/or processed by another law enforcement agency, i.e., the Galveston County Sheriff's Department or another police agency in the county. The complaint here is ultimately filed in a county court at law and, when the defendant is convicted, he pays his court costs, which includes the fee in question, to Galveston County, care of the Galveston County Sheriff's Department.

The Galveston County Sheriff's Department disputes Hitchcock's claim to any of the fees the county collects under 1 and 2 above. The Sheriff's Department contends that the intent of Art. 102.011 was to raise revenue for state and county governments only. They allege that the tracking system that they would have to put in place in order to pay Hitchcock's claims would be extremely cumbersome and would not be cost effective. A copy of a letter from the Sheriff's Department to my office on this matter is enclosed.

Based on the above facts, your opinion on the following questions is requested:

1. Is the City of Hitchcock entitled to the fee collected by the Galveston County Sheriff's Department under fact situation 1 above?
2. (a) Is the City of Hitchcock entitled to the fee collected by the Galveston County Sheriff's Department under fact situation 2 above?

(b) Since Section (2) of Art. 102.011, C.C.P., sets out that the "executing or processing" agency is entitled to the fee, who makes the decision as to which agency should be awarded the fee?
3. Is the Galveston County Sheriff's Department authorized to invoice other counties or municipalities to collect this fee when a Galveston County Sheriff's deputy executes an arrest warrant originally processed by another county or municipality?

It appears to this writer that Art. 102.011 is not limited to state and county peace officers.

Section (a) of Art. 102.011 states:

"A defendant convicted of a misdemeanor shall pay the following fees for services performed in the case by a peace officer"
(emphasis added)

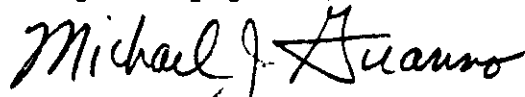
Article 2.12 of the Code of Criminal Procedure enumerates those persons who are peace officers. Police officers of an incorporated city are included under Section 3. Hitchcock is an incorporated city in the State of Texas. This seems to indicate that Hitchcock has a legitimate claim to the fees discussed herein.

I am unsure who decides on which agency receives a fee when the arresting agency is different than the processing agency. Since the statute is silent, I assume it is left to the agencies to come to some type of agreement. Perhaps the decision should be a judicial one. Another view would be that the "executing or processing" agency is one in the same. This would indicate that the agency who actually arrests a defendant on an outstanding warrant is the only agency due the statutory fee.

It is writer's opinion that the Galveston County Sheriff's Department can invoice other counties and municipalities for their fee when they execute a foreign warrant.

Your assistance in answering these questions is certainly appreciated.

Very truly yours,


MICHAEL J. GUARINO
Criminal District Attorney
Galveston County, Texas

jr

cc: Sheriff Joe Max Taylor
Dennis Holecek
Phil Lohec
Al Cogbill